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United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
HORACIO ORTEGA-MARTINEZ,  
Aka Horacio Ortega-Diaz,  
  
Defendant.

CASE NO. 1:22-CR-00132-JLT-SKO

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
ORDER

DATE: October 19, 2022  
TIME: 1:00 p.m.  
COURT: Hon. Sheila K. Oberto

**BACKGROUND**

This case is set for a status conference on October 19, 2022. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has

1 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
 2 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
 3 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 4 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 5 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 6 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 7 or in writing”).

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 9 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-  
 10 justice continuances are excludable only if “the judge granted such continuance on the basis of his  
 11 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
 12 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
 13 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
 14 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
 15 and the defendant in a speedy trial.” *Id.*

16 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 17 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 18 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 19 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 20 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 21 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*  
 22 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
 23 following the September 11, 2001 terrorist attacks and the resultant public emergency).

24 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt  
 25 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
 26 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act  
 27 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL  
 28 1589359 at \*7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is

1 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked  
2 speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a  
3 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness  
4 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;  
5 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;  
6 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

7 In light of the foregoing, this Court should consider the following case-specific facts in finding  
8 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)  
9 (Local Code T4). If continued, this Court should designate a new date for the status conference. *United*  
10 *States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be  
11 "specifically limited in time").

#### 12 STIPULATION

13 Plaintiff United States of America, by and through its counsel of record, and defendants, by and  
14 through defendants' counsel of record, hereby stipulate as follows:

- 15 1. By previous order, this matter was set for a status conference on October 19, 2022.
- 16 2. By this stipulation, defendant now moves to set the matter for a change of plea on  
17 November 4, 2022, and to exclude time between October 19, 2022, and November 4, 2022, at 9:00 a.m.  
18 before District Judge Jennifer L. Thurston, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].
- 19 3. The parties agree and stipulate, and request that the Court find the following:
  - 20 a) The parties have reached a plea resolution.
  - 21 b) Counsel for the defendant needs additional time to finalize the terms.
  - 22 c) The government is not opposed to a continuance.

23 In addition to the public health concerns cited by the General Orders and presented by the  
24 evolving COVID-19 pandemic, and current subvariant strains, an ends-of-justice delay is  
25 particularly apt in this case because, in this district, the Court has begun to schedule a limited  
26 number of trials with several precautions designed to protect trial participants from possible  
27 infection with the coronavirus.

- 28 d) Based on the above-stated findings, the ends of justice served by continuing the

case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of October 19, 2022 to November 4, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(1)(G), (7)(A) [Local Code T4] because it results from consideration by the court of a proposed plea agreement to be entered into by the defendant and the government and a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendants in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: October 11, 2022

PHILLIP A. TALBERT  
United States Attorney

/s/ KAREN A. ESCOBAR  
KAREN A. ESCOBAR  
Assistant United States Attorney

Dated: October 11, 2022

/s/ MELISSA B. BALOIAN  
MELISSA B. BALOIAN  
Counsel for Defendant  
HORACIO ORTEGA-  
MARTINEZ

**ORDER**

IT IS SO ORDERED.

DATED: 10/13/2022

Sheila K. Oberto  
THE HONORABLE SHEILA K. OBERTO  
UNITED STATES MAGISTRATE JUDGE